

STATE OF MICHIGAN  
COURT OF APPEALS

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NEW MILLENNIUM, INC, HASSAN HARAJLI,  
and FUSION OIL COMPANY,

UNPUBLISHED  
July 5, 2005

Plaintiffs-Appellants,

v

BARRICK ENTERPRISES, INC,

No. 260085  
Oakland Circuit Court  
LC No. 2004-061762-CZ

Defendant-Appellee.

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Before: Cooper, P.J., and Fort Hood and R. S. Gribbs\*, JJ.

PER CURIAM.

Plaintiffs New Millennium, Inc., Fusion Oil Company (“Fusion”), and Hassan Harajli appeal as of right the grant of summary disposition in favor of defendant Barrick Enterprises, Inc. in this case involving an alleged tortious interference of a contract or business relationship. We affirm. This opinion is being decided without oral argument pursuant to MCR 7.214(E). We review a trial court’s decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

This case involves defendant’s sale of gasoline in bulk to Crescent Petroleum (“Crescent”). Crescent operates a fuel station in Madison Heights and has done so since approximately January 2004. The fuel station was operated pursuant to a land contract and other franchise agreements between Crescent and plaintiffs.<sup>1</sup> The agreements provided, among other requirements, that Crescent purchase 100 percent of its gasoline requirements from plaintiffs.

The relationship between Crescent and plaintiffs soon began to deteriorate. Fusion alleged that Crescent was in default of the parties’ Motor Fuel Agreement by failing to purchase a sufficient amount of petroleum products from Fusion and by failing to keep a sufficient supply

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<sup>1</sup> Plaintiffs are interrelated parties. Fusion contracted to furnish gas to Crescent, New Millennium, Inc. is the land contract vendor for the real property, and Mr. Harajli is the president and owner of both companies.

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

of petroleum products on site to meet customer demand. Crescent notified Fusion that it had breached the agreement by overcharging for petroleum products and by continuing to provide inadequate quantities of fuel to Crescent. In response, Fusion sent Crescent a termination notice on August 26, 2004. Plaintiffs' notice purported to end the franchise agreement "immediately," and directed Crescent to vacate the premises no later than September 10, 2004.

Plaintiffs filed suit against Crescent in the United States District Court, Eastern District of Michigan, Southern Division, seeking declaratory relief under the Petroleum Marketing Practices Act (PMPA), 15 USC 2801 *et seq.*, a judgment for possession of the gas station, and monetary damages for the alleged breach of contract. Crescent filed a counter-complaint. Plaintiffs filed an emergency motion for judgment of possession, and subsequently sought a preliminary injunction and a temporary restraining order. The District Court denied plaintiffs' request for relief, noting that the PMPA is designed to protect *franchisees* from arbitrary or discriminatory non-renewal of their franchises, and that plaintiffs could not meet their burden for relief under FR Civ P 65(b).

According to the affidavit of Crescent's president, Mohammed El-Bathy, he contacted defendant on September 3, 2004, to inquire about obtaining replacement petroleum products. As a result, defendant began to deliver petroleum products to Crescent. Plaintiffs allege that they contacted defendant on several occasions to attempt to persuade defendant not to sell gas to Crescent, but met with no success. Thereafter, plaintiffs filed the instant case, alleging tortious interference with a contract or advantageous business relationship.

Plaintiffs first challenge the trial court's decision that they failed to establish a *prima facie* case of tortious interference. We disagree. "The elements of tortious interference with a contract are: '(1) a contract, (2) a breach, and (3) an unjustified instigation of the breach by the defendant,'" or causation. *Derderian v Genesys Health Care Systems*, 263 Mich App 364, 382; 689 NW2d 145 (2004), quoting *Mahrle v Danke*, 216 Mich App 343, 350; 549 NW2d 56 (1996).<sup>2</sup> The plaintiff must show either "'the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another.'" *Derderian, supra*, quoting *CMI Int'l, Inc v Internet Int'l Corp*, 251 Mich App 125, 131; 649 NW2d 808 (2002).

To establish that a lawful act was done with malice and without justification, a plaintiff must demonstrate, with specificity, affirmative acts by defendant that corroborate the improper motive of the interference. Where the defendant's actions were motivated by legitimate business reasons, [his] actions would not constitute improper motive or interference. [*Mino, supra* at 78.]

The trial court found that the initial contact between defendant and Crescent occurred after the end of the valid business relationship between Crescent and plaintiffs. The trial court concluded that plaintiffs failed to show either an existing contract at the time of defendant's

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<sup>2</sup> The elements of a claim for tortious interference with an advantageous business relationship are substantively similar. *Mino v Clio School Dist*, 255 Mich App 60, 78; 661 NW2d 586 (2003).

involvement or a termination of the contract due to actions by defendant. Plaintiffs do not dispute that the first contact between defendant and Crescent occurred on September 3, 2004. They argue that the trial court erred in finding that their contract with Crescent ended on August 26, 2004—the date they purported to terminate the agreement. Citing 15 USC 2804(a)(2), plaintiffs maintain that notice of termination must be furnished within not less than ninety days. As they furnished notice on August 26, 2004, plaintiffs contend that the effective termination date would have been November 24, 2004. However, plaintiffs admit that 15 USC 2804(b)(1)(A) allows for termination with less than ninety days notice in circumstances where it would be unreasonable to wait the full notice period. Plaintiffs previously relied on 15 USC 2804(b) in seeking the *immediate* termination of the agreement and possession of the gas station and may not argue otherwise now.

Additionally, as Congress enacted the PMPA “to protect ‘franchisees from arbitrary or discriminatory termination or non-renewal of their franchises,’” *PDV Midwest Ref, LLC v Armada Oil & Gas Co*, 305 F3d 498, 506-507 (CA 6, 2002). (citations omitted), the ability to seek an injunction for a violation of the notice provisions in 15 USC 2804 lies solely with the *franchisee*. See *California Petroleum Distributors, Inc v Chevron USA, Inc*, 589 F Supp 282, 289 (ED NY, 1984); *Wojciechowski v Amoco*, 483 F Supp 109, 114 (ED Wis, 1980). It is clear from the record of the federal case that Crescent is not seeking to extend its relationship with plaintiffs and plaintiffs have presented no evidence that this relationship continued beyond August of 2004. Accordingly, there existed no relationship in which defendant could interfere.

Moreover, even if the franchise contract remained in effect at the time of contact between defendant and Crescent, we would still agree with the trial court’s decision. Plaintiffs’ own evidence, admissions, and filings in both the federal and state cases show that defendants did not induce or cause the rift between plaintiffs and Crescent. This rift resulted solely from the prior actions of plaintiffs and Crescent. Accordingly, plaintiffs failed to satisfy the causation requirement and the trial court properly dismissed plaintiffs’ claim.

Plaintiffs further argue that the trial court’s grant of summary disposition was premature because discovery was incomplete and they did not have an opportunity to more fully explore the nature of Crescent’s initial contact with defendant and the statements made in the affidavit by Crescent’s president. We disagree. Summary disposition is appropriate before the close of discovery if there is no reasonable chance that further discovery will result in factual support to the opposition. *State Treasurer v Sheko*, 218 Mich App 185, 190; 553 NW2d 654 (1996).

Here, the trial court correctly decided that no contract or advantageous business relationship existed at the time of the initial contact between defendant and Crescent and that the relationship had deteriorated solely because of the previous actions of plaintiffs and Crescent.

Thus, the trial court's grant of summary disposition was not premature despite the fact that a question may have remained as to which party actually initiated the later contact between defendant and Crescent.

Affirmed.

/s/ Jessica R. Cooper  
/s/ Karen M. Fort Hood  
/s/ Roman S. Gribbs